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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

GLENDALE TENANTS ASSOCIATION,

Plaintiff and Respondent,

v.

CITY OF GLENDALE,

Defendant;

PROPERTY OWNERS FOR PROPERTY  
RIGHTS PROTECTION,

Real Party in Interest and  
Appellant.

B175160

(Los Angeles County  
Super. Ct. No. BS084188)

APPEAL from a judgment of the Superior Court of Los Angeles County.

David P. Yaffe, Judge. Affirmed.

Straw & Gough, Paul T. Gough; Kaplanis & Grimm and Trevor A. Grimm for  
Real Party In Interest and Appellant.

Kenneth H. Carlson for Plaintiff and Respondent.

In this case, we hold that an election official exceeded her authority when she calculated a filing time period based on a statute that was no longer effective. The election official's duty is ministerial not discretionary; she should apply the governing law to the facts presented in an individual case. She lacks authority to decide that a law is invalid. We also hold that an amendment to Election Code section 9265, modifying the time period for filing an initiative petition may be applied prospectively to filings that occur after the effective date of the amendment, even where the proponents began the process of placing an initiative on the ballot prior to the effective date of the amendment. We shall affirm the judgment of the trial court granting a petition for writ of mandate prohibiting the City of Glendale from placing on the ballot an initiative that was filed after the applicable deadline had elapsed.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The City of Glendale (City) is a Charter City with a duly elected City Council. The City Clerk, Doris Twedt, acts as the elections official consistent with Elections Code<sup>1</sup> section 320. The parties rely solely on the Election Code, citing no relevant provision of the Glendale City Charter, and therefore our review is limited to the statutes. Appellant, Property Owners For Property Rights Protection (POP) sought to place an initiative concerning rent control on the ballot (Initiative). POP undertook the multistep process of proposing and qualifying the Initiative for the ballot as detailed below.

#### *Notice of Intention To File A Petition*

“Before circulating an initiative petition in any city, the proponents of the matter shall file with the elections official a notice of intention to do so, which shall be accompanied by the written text of the initiative and may be accompanied by a written statement not in excess of 500 words, setting forth the reasons for the proposed petition.” (§ 9202.) The same rule is applies to a measure proposing to amend a city charter.

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<sup>1</sup> All statutory citations are to this Code.

(§ 9256.) On October 15, 2002, POP submitted to City a notice of intent to circulate a petition (Petition).

*Ballot Title And Summary*

“Any person who is interested in any proposed measure shall file a copy of that proposed measure with the elections official with a request that a ballot title and summary be prepared. . . . The elections official shall immediately transmit a copy of the proposed measure to the city attorney. Within 15 days after the proposed measure is filed, the city attorney shall provide and return to the city elections official a ballot title for and summary of the proposed measure.” (§ 9203.) A notice of intention, the ballot title, and the summary must be published. (§ 9205)

The same rules are applicable to a measure proposing to amend a city charter. (§ 9256) Here, the Glendale City Attorney prepared a Title and Summary, which POP received on October 30, 2002, and which was published on November 4, 2003.

The Title and Summary was as follows:

“Title: A Proposed Charter Amendment precluding the city from regulating the price or other consideration for the sale, lease, rental or exchange of residential real property with specific exceptions. ¶ Summary: The proposed charter amendment will prohibit the City from regulating or controlling the price for the sale, exchange or transfer of residential real property. ¶ Prohibits City regulation or control of rates charged for leasing or renting residential property. Provides certain exceptions to the prohibitions as follows: [¶] residential property which has been cited for serious code violations; residential property owned by the City with City financial assistance; authority of the City to regulate residential property through the exercise of planning and zoning powers; the acquisition of residential property by the City; authority of the City to require a business license for the sale or rental of residential property; hotels, motels or other facilities subject to a transient occupancy tax; impairment of contracts entered into prior to enactment of the proposed charter amendment or as otherwise limited by state law. Designates the proposal as Glendale Rights Protection Measure. Declares that any conflicting

measure on the same ballot attempting to regulate the same subject which receives less votes than this proposed measure shall not, in whole or in part, become effective.”

### *Circulation of the Petition*

“The proponents may commence to circulate the petitions among the voters of the city for signatures by an registered voter of the city after publication or posting . . . .”

(§ 9207.) After publishing the ballot title and summary, POP circulated the Petition and obtained 19, 333 signatures.

### *Filing of The Petition*

After the petition is circulated, the proponents of the initiative must file it with the elections official. (§ 9265.) Elections Code section 9265 was amended effective January 1, 2003. The amendment became effective during the time that POP was circulating its petition.

Prior to January 1, 2003, a petition to amend a municipal charter must be filed with the elections official “not later than 200 days after the date on which the notice of intent to circulate the petition was published or posted, or both.”

The statute was amended with an effective date of January 1, 2003 (Amendment). Pursuant to the Amendment, “[t]he petition shall be filed with the elections official by the proponents, or by any person or persons authorized in writing by the proponents. All sections of the petition shall be filed at one time, and a petition section submitted subsequently may not be accepted by the elections official. The petition shall be filed (1) within 180 days from the date of receipt of the title and summary, or (2) after termination of any action for a writ of mandate pursuant to Section 9204, and, if applicable, receipt of an amended title or summary, or both, whichever comes later.” (§ 9265 .)

On April 24, 2003, Twedt informed Joe Guardaramma, who identifies himself as an attorney for POP, that based on the City Attorney’s opinion “the 200-day time period began the date of your first publication which was November 4, 2002. My calculations indicate . . . the petitions must be filed in this office no later than May 27, 2003.” No

further explanation is given for why the time period under the former statute was applied instead of the time period under the governing statute.

The petition was filed on May 12, 2003. Twedt accepted the Petition, and the City maintains this was consistent with Elections Code section 9265. In a memorandum submitted by Twedt and approved by Scott Howard, the City Attorney, Twedt concluded that “Elections Code Section 9265 (in effect on that date [when the Title and Summary were prepared]) provided that the petition must be filed not more than 200 days after the date on which the notice of intent to circulate was published.” No explanation is provided for the decision to apply a former statute.<sup>2</sup>

*Verification of Signatures and Placement on the Ballot*

“After the petition has been filed, the election official shall examine the petition in the same manner as are county petitions in accordance with Sections 9114 and 9115 . . . .” (§ 9266)~ The referenced statutes require the election official to determine the number of valid signatures and explain the process for that determination.

The Registrar-Recorder of Los Angeles determined that 14, 253 signature were found sufficient. The City Council voted on June 17, 2003 to put the Initiative on the ballot.

POP’s efforts to place the Initiative on the ballot were stymied by the Glendale Tenants Association (GTA), which successfully sought a writ of mandamus prohibiting the City from placing the initiative on the ballot. That decision is the subject of this appeal.

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<sup>2</sup> The City was a party in the trial court, but is not a party on appeal. In its trial brief it argued that an amendment should not be construed to apply to an initiative that is “in progress.” It provides no legal support for its statement that this interpretation “leads to the more reasonable result in that it protects the initiative process.”

## DISCUSSION

This cases arises as a result of Twedt's decision that the statute in effect in May 2003 did not apply to the petition filed in May 2003. For reasons explained below (1) the decision to ignore current law exceeded the election official's ministerial authority; (2) under the correct statute, the petition was filed 14 days too late; and (3) application of the Amendment to the petition is prospective even though POP began the process for placing the Initiative on the ballot prior to the Amendment.

### *I. Ministerial Duty of Election Official*

The initiative is a method of enacting legislation (*American Federation of Labor v. Eu* (1984) 36 Cal.3d 687.) The initiative has been described as "precious to the people" and "'one of the most precious rights of our democratic process.'" (*McFadden v. Jordan* (1948) 32 Cal.2d 330, 332; (*Ortiz v. Madera County Board of Supervisors* (1980) 107 Cal.App.3d 866, 870.) It follows that courts are charged with zealous protection of the initiative right, the procedures for which are codified in the Election Code. (*McFadden v. Jordan* (1948) 32 Cal.2d 330, 332; *Alliance For A Better Downtown Millbrae v. Wade* (2003) 108 Cal.App.4th 123 (*Wade*).)

Generally, however, the court is not the first to apply the procedural requirements to determine if a given initiative should be placed on the ballot. That power – to effectuate in the first instance the People's right to enact legislation – often falls to the election official. To safeguard the neutral application of the procedural requirements – an application unfocused on the content of the initiative or the election official's personal view -- the election official's authority is ministerial. "A ministerial duty is an act that a public officer is obligated to perform in a prescribed manner required by law when a given state of facts exists." (*Wade, supra*, 108 Cal.App.4th at p. 129.) Within this ministerial duty is the obligation to reject a petition that suffers from a substantial defect. (*Farley v. Healey* (1967) 67 Cal.2d 325, 327; *Ruiz v. Sylva* (2002) 102 Cal.App.4th 199, 216.) It is not disputed that the failure to comply with a time requirement constitutes a substantial defect. (See *Steele v. Bartlett* (1941) 18 Cal.2d 573, 574 [candidate who filed election papers one day late must be omitted from the ballot].)

The determination to apply a different law--one that is not effective at the time the election official is charged with applying the law -- falls outside the definition of ministerial authority; a finding that a particular law is invalid --either facially or as applied -- requires a judicial determination. (*Lockyer v. City & County of San Francisco* (2004) 33 Cal.4th 1055, 1082 [“a local public official, charged with the ministerial duty of enforcing a statute, generally does not have the authority, in the absence of a judicial determination of unconstitutionality, to refuse to enforce the statute on the basis of the official's view that it is unconstitutional.”]) Contrary to POP’s argument that Ms. Twedt’s decision to apply a former statute protects the “precious right of [the] initiative,” it instead diminishes that right by subjecting it to the unexplained whims of an election official to decide the law.

Here, Twedt exceeded her ministerial duty when she failed apply the governing law to the Petition. Regardless of her rationale and regardless of the opinion of the City Attorney, she lacked the discretion to refuse to follow the applicable law. (Cf. *Farley v. Healey, supra*, 67 Cal.2d 325, 327.)

## *II. Application of Section 9625*

Instead of applying the former version of section 9625, Twedt should have applied the statute as effective on the date the Petition was filed. Under that statute, the petition shall be filed (1) within 180 days from the date of receipt of the title and summary . . . .” (§ 9265.) Title and summary was received on October 30, 2002. One hundred and eighty days from the receipt of title and summary was April 28, 2003. Thus, based on the plain language of the statute, POP had until April 28, 2003 to file its petition.

POP argues that it “had 180 days from January 1, 2003 to file its initiative petition . . . .” That contention is not based on the language of either the former section 9265 or the Amendment. Instead, it is based on the rule that when the Legislature shortens a statute of limitations, it must provide a reasonable time after the effective date for “the holder of a valid accrued claim within which to file his claim or commence his action.” (*Baldwin v. City of San Diego* (1961) 195 Cal.App.2d 236, 241; see also *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122.) In *Baldwin*, the case

most heavily relied upon by POP, the court found that where a statute of limitations was shortened from three years to ninety days, the persons with a valid accrued claim should have ninety days from the effective date of the statute to file a claim. (*Baldwin v. City of San Diego, supra*, 195 Cal.App.2d at p. 243.)

POP provides no rationale for applying a rule used in the context of the statute of limitations to the time period for filing an initiative petition. Even assuming for purposes of argument only that the rule is applicable here, POP neither identifies a right which had accrued prior to the effective date of the Amendment nor contends that the time it had after the passage of the Amendment – 118 days – to file its petition was unreasonable. Therefore, contrary to POP’s argument, *Baldwin* does not compel the finding that its petition was timely filed.

### *III. Retroactivity*

POP argues that application of the 180 day deadline from the time it received title and summary was an impermissible retroactive application of a statute. POP’s principal contention is that the Amendment is retroactive because it “retroactively move[d] the start date back from November 4, 2002 to October 30, 2002.” That specific claim does not assist POP. Even if it were accurate, the petition would have been required to be filed on May 2, 2003 (180 days from November 4th) 10 days before it was filed.

Analysis of POP’s more substantial argument-- that the Amendment should not apply to “pending imitative proceedings” – requires defining a retroactive law. “[A] retroactive or retrospective law “is one which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute.” [Citations] . . . “[E]very statute, which takes away or impairs vested rights acquired, under existing laws, or creates a new obligation, imposes a new duty, or attaches new disability, in respect to transactions or considerations already past, must be deemed retrospective.”” (*Meyers v. Phillip Morris Co., Inc.* (2002) 28 Cal.4th 828, 839.) “A statute or ordinance has retroactive effect if it substantially changes the legal effect of past events.” (*Plotkin v. Sajahtera, Inc.* (2003) 106 Cal.App.4th 953, 960.)

On the other hand, a statute ““is not made retroactive merely because it draws upon facts existing prior to its enactment . . . .”” (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 288.)<sup>3</sup> A statute that governs a “procedure to be followed in the future” is prospective in nature because it concerns future conduct. (*John L. v. Superior Court* (2004) 33 Cal.4th 158, 171, italics omitted; *Anton v. San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 826.) Just as a law governing conduct of trials is applied prospectively to a trial that takes place after the laws effective date (*Tapia, supra*, 53 Cal.3d at pp. 288-289), here the time period for filing a petition should have been applied prospectively to petitions filed after the effective date of the Amendment.

Reduced to its essence, POP’s appeal is about the fact that it expected to have 200 days from the date of publication not 180 days from the date it received title and summary. For example, POP argues this case is most analogous to *Coalition For Fair Rent v. Abdelnour* (1980) 107 Cal.App.3d 97. While the issues in this case are nothing like those in *Abdelnour*, the court in *Abdelnour* noted that it would be helpful to the proponents to have knowledge of the number of signatures they needed prior to beginning circulation. (*Id.* at p. 112.) Likewise, it would have been helpful to POP if the Amendment changing the deadline had not become effective after it began circulating its petition. However, the fact that the Amendment detrimentally affected POP shows neither that it was applied retroactively nor that it was invalid.

The Utah Supreme Court and Colorado Supreme Court reached the same conclusion applying analogous principles. (*Utah Safe to Learn-Safe v. State* (Utah 2004) 94 P.3d 217; *Committee for Better Health Care v. Meyer* (Colo. 1992) 830 P.2d 884, 891.) In *Utah Safe to Learn-Safe v. State, supra*, 94 P.3d 217, the Utah high court considered a challenge to the application of an amendment to an initiative which had been approved for circulation. Applying the Utah Code, which requires the lieutenant

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<sup>3</sup> *Tapia, supra*, 53 Cal.3d 282 was called into doubt on another ground as explained in *Pro-Family Advocates v. Gomez* (1996) 46 Cal.App.4th 1674, 1683.

governor to first approve the initiative for circulation and to later determine whether the initiative has garnered the requisite number of signatures, the court found the “right to an initiative election did not accrue until the imitative petition containing a proper number of certified signatures was filed with the . . . [r]ecorder’ and action was taken thereon.” (*Id.* at p. 223.) “[T]he lieutenant governor must evaluate a proposed initiative in relation to the law in effect at the relevant time, whether that be the time the initiative is considered for circulation or the time it is considered for placement on the ballot. This is true even if the law changes in the interim.” (*Ibid.*) Similarly, the Colorado court held that amendments that changed the procedures associated with the initiative process were not applied retroactively to events that took place after the effective date of the amendments. (*Committee for Better Health Care v. Meyer, supra*, 830 P.2d 884, 891.)

#### **DISPOSITION**

The judgment granting Glendale Tenants Association’s petition for writ of mandate is affirmed. GTA is entitled to costs on appeal.

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COOPER, P.J.

We concur:

RUBIN, J.

BOLAND, J.